IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03/08/2004

Coram

The Honourable Mr. Justice P.K.MISRA
and
The Honourable Mrs. Justice R.BANUMATHI

Writ Petition No.5631 of 2003

The State of Tamil Nadu,
rep. by its
Secretary to Government,
Public Works Department,
Fort St.George,
Chennai - 9. .. Petitioner

-vs-

1. K.Lakshminarayanan

2. The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai - 104. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari as stated therein.

For petitioner: Mr. P.S.Sivashanmuga Sundaram
Addl.Government Pleader

For 1st respondent: Mr. R.Muthukannu

:O R D E R

(Order of the Court was
made by R.BANUMATHI, J).

Under the impugned order in O.A. No.2230 of 2000 (dated 21.1.2002), the Tamil Nadu Administrative Tribunal Chennai has quashed Charge Memo dated 11.9.1989 ending with the Inquiry Report dated 16.3.1995. In the same order, while disposing of the O.A.No.2227 of 2000, further direction was given to the Writ Petitioner viz., the State of Tamil Nadu and its authorities to consider the case of the first respondent for promotion as Assistant Executive Engineer from the date on which his Junior was promoted.

2. The Writ Petition filed by the State of Tamil Nadu arises on the following facts and alleged misconduct by the first respondent:-
As an Assistant Engineer, PWD, the first respondent was incharge of Section I of Adayar Special Sub Division, Adayar, the work of construction of the masonry protective wall on Adayar bank from LS 3435M to 3755 M (Reach No.1) was executed under his direct supervision. The said work had been entrusted to Three Star Constructions, Chennai. The first respondent being the field officer was directly responsible for allowing execution and supervision of the work, as per specifications as well as in charge of the stores viz., cement and other required materials stored for the said work.

3. During the course of supercheck of the progress of the work, inspection of the stores and subsequent examination of relevant documents, the Executive Engineer, Public Works Department, Saidapet Division, Chennai had noticed the following irregularities alleged to have been committed by the first respondent along with others and brought the facts to the notice of the concerned Superintending Engineer:
(i) The first respondent was negligent in the supervision of the said work.
(ii) The first respondent had allowed the contractor to execute the substandard work.
(iii) The first respondent had manipulated the documents connected with the issue of materials and made entries as if 600 bags of cement were issued to the contractor, when there was no necessity to issue such large quantity of cement since there was absolutely no progress in the work and thus caused loss to the tune of Rs.33,090/-.
(iv) All his above actions were with the intention to obtain personal gain by cheating the Department.

4. It was also noticed that another official viz., Govindan, Junior Engineer, who was in charge work relating to Reach number L.S. 375 5 M to L.S.4075 M (Reach No.II) has also indulged in similar activities as done by the first respondent. Hence, in view of the seriousness of the issue, the Superintending Engineer, Public Works Department, Chengalpet Circle, Kancheepuram has recommended to the Chief Engineeer (General), Public Works Department to place the first respondent under suspension. Based on the recommendations of the Superintending Engineer, the first respondent was placed under suspension with effect from 31.7.1989 in Chief Engineer (General) Proc.No.CII(3)/13098/89-I dated 31.7.1989. The Superintending Engineer himself (since he is competent authority) had issued orders suspending another officer, L. Govindan, Junior Engineer in Proc. No.E5 /163C/89 dated 31.7.1989.

5. Departmental probe further revealed that the Assistant Executive Engineer viz., S. Baskarakrishnamoorthi had failed to supercheck the works in time and thus allowed the first respondent and another Junior Engineer - L.Govindan to commit malpractice as stated above. Therefore, disciplinary action under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was initiated against the first respondent, the said Junior Engineer and the Assistant Executive Engineer by the Executive Engineer, Saidapet Division, Chennai.

6. Deputy Superintending Engineer, Public Works Department, Chennai Circle was nominated as Inquiry Officer. He conducted the Inquiry and submitted his Inquiry Proceedings and findings to the Chief Engineer (General) in respect of the charges framed against all the officials. The Government was the competent authority to pass final order in the case. Charge sheet papers and findings of the Inquiry Officer and connecting records were sent to the Government through the Chief Engineer (General), Public Works Department on 6.8.1991.

7. On the basis of the observation of the Tribunal in T.A. Nos.175/9 1 and O.A. No.1148/91, it was brought to the notice by P & AR Department that the charges framed by certain Heads of Departments against State Service Officers are out of jurisdiction and concerned appointing authorities alone are competent to frame charges against the Government Servants.

8. Therefore, in supercession of the earlier Charge Memo dated 11.9.1989, fresh charges were framed against the first respondent in Letter No.30390/E2/89-17 dated 22.10.93 on the line of the charges already framed by the Executive Engineer, Public Works Department, Saidapet Division in Memo No.1859/89 dated 11.9.89. Charges were framed against another delinquent officer,Baskarakrishnamoorthi, Assistant Executive Engineer.

9. Totally five charges were framed against the first respondent inclusive of charges of false and fictitious entries made in the Issue and Receipt Register of Materials; and causing pecuniary loss to the Government to the tune of Rs.33,090/-. The Inquiry Officer was appointed and all charges against the first respondent were found proved. After examination of the Inquiry Officer's Report, the Government has proposed to accept the findings of the Inquiry Officer and held that the five charges framed against the first respondent are proved. The report of the Inquiry Officer was communicated to the first respondent by the Government Letter No.30390/E2/89-38 dated 3.11.97 for making further representation on the findings of the Inquiry Officer. The first respondent has also submitted his further representation. When it was under consideration and was about to be finalized, the first respondent had filed Original Application No.2230 of 2000 on the file of the Administrative Tribunal to quash the Charge Memo dated 22.10.1993. He has also filed given below O.As.
(i)O.A. No.2227 of 2000:
Challenging the order of non-inclusion of his name in the panel for promotion to the post of Assistant Executive Engineer for the year 1997-98.
(ii) O.A.No.2269 of 2000:
Challenging the order dated 21.5.1999 for non-inclusion by the name in the Panel for the year 1998-99.

10. All the three Original Applications were disposed of by the Administrative Tribunal by a common order. Referring to AIR 1990 SC 1309 , the Tribunal found that there is no satisfactory explanation for the inordinate delay in issuing the Charge Memo. The Tribunal found that after framing all the charges from 11.9.1989 to March 2000, there was nearly a delay of 11 years in framing charges. In view of such delay, the entire proceedings

commencing from the issuance of the first Charge Memo dated 11.9.1989 ending with the Inquiry Report dated 16.3.1995 was set aside. The Tribunal allowing O.A. No.2227 of 2000 directed the Government that the first respondent's name should be included in the Panel for promotion as Assistant Executive Engineer as on 29.10.1997.

11. The State Government has preferred this Writ Petition as against the order made in O.A. No.2230 of 2000. No Writ Petition has been filed against the order relating to O.A. No.2227 of 2000.

12. Learned Additional Government Pleader representing the State submitted that the delay in framing the charges is satisfactorily explained and that there is no delay. Drawing the attention of the Court to the various stages of the proceedings, the learned Additional Government Pleader has further submitted that the issuance of Charge Memo started even in 1989 and that prompt action was taken and that when the matters were about to be finalised on the fresh charges initiated, the first respondent belatedly approached the Tribunal to nullify the action. Assailing the findings of the Tribunal, the learned Additional Government Pleader further submitted that the Tribunal erred in finding that there is a delay of more than one decade and has not taken into consideration the prompt action taken by the Department and prays for setting aside the order of the Tribunal.

13. Countering the arguments of the Writ Petitioner/Tamil Nadu Government, the learned counsel for the first respondent has submitted that the incident being in July 1989 and that the impugned Chargi Memo was served on the petitioner after a long unexplained delay which vitiates the proceedings. It is further submitted that the Tribunal has rightly quashed the Charge Memo and any interference with the same would be unfair to the first respondent. The main contention urged onbehalf of the first respondent is that the impugned Charge Memo was issued to the first respondent only to deprive him of his promotional opportunities.

14. Referring to the number of decisions viz., 1996 WLR 677; 1985 WLR 522 and AIR 1990 SC 1309, the Tribunal found that from 11.9.1989 to March 2000 viz., 11 years has lapsed and there is unexplained inordinate delay of more than a decade in issuing Charge Memo. Thus, on the ground of delay in framing the charges, the Tribunal has set aside the Charge Memo and the proceedings. We are of the view that the Tribunal erred in finding that there is unexplained delay of eleven years. The Tribunal has not considered the counter statement and the steps taken by the department in various stages. Demonstrably, there is no delay in issuing the Charge Memo. It is well settled that mere delay in issuing charges itself cannot amount to prejudice or result in quashing the Charge Memos.

15. Whether the Disciplinary Proceedings are to be terminated on account of delay has to be examined on facts and circumstances of each case. The essence of the matter is that, the Court has to take into consideration all the relevant factors, to balance and weigh them to determine, if it is in the interest of clean administration, the Disciplinary Proceedings should be allowed to continue even after delay. The main point to be considered is

whether the delay is unexplained in issuing Charge Memo on the face of it and unexplained delay has caused prejudice to the delinquent. The same has to be decided by balancing the process that is weighing the factors, 'for and against' as to why there was delay. In careful consideration of the order impugned, we find that the Tribunal has not adopted such balancing process in finding the reason for the delay which the Government has properly explained.

16. By careful consideration of the averments in the Writ Petition, we find that there is no inordinate delay in issuing the Charge Memo and the proceedings. The alleged misconduct of issuance of materials viz., 600 bags of cement issued in July 1989, since the allegation was grave in nature viz., causing loss to the Government to the tune of Rs.33,090/-. Taking note of the seriousness of the issue, the Superintending Engineer had recommended to the Chief Engineer (General), PWD to place the first respondent under suspension and he was placed under suspension with immediate effect from 31.7.1989. The Departmental probe revealed the involvement of another Junior Engineer, L. Govindan, who was also placed under suspension, and disciplinary action under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules was initiated against the first respondent. Inquiry was held and connected records were submitted to the Government through the Chief Engineer (General), PWD on 6.8.1991 when the case was under consideration of the Government to pass the final order. Further Departmental probe disclosed the involvement of Assistant Executive Engineer viz., Baskarakrishamoorthi, who is a State Service Officer. In reference to the verdict of the Supreme Court and the observation made by the Tribunal in T.A. Nos.175/91, OA Nos.1148 of 1991, P & AR Department advised that the charges framed by Heads of Department are out of jurisdiction and only the concerned appointing authorities alone are competent to frame charges against the Government servants. P & AR Department had advised to issue fresh charges to the first respondent and others superseding the earlier Charge Memo dated 11.9.1989.

17. Accordingly, superseding the earlier Charge Memo dated 11.9.1989 fresh charges were framed against the first respondent in Government Letter No.30390/E2/89-17 dated 22.10.1993. The other delinquent officers of the Government and Baskarakrishnamoorthi, Assistant Executive Engineers also faced the departmental inquiry. The first respondent though received Charge Memo on 24.12.1993 has not submitted his written explanation. The remaining officers offered their explanation. Inquiry Officer was nominated for conducting the oral inquiry in respect of the delinquent officers involved in the case. The Inquiry Officer has submitted his report finding that the charges were proved. When the report of the Inquiry Officer was under consideration of the Government and almost proceedings were about to be concluded, the first respondent had approached the Tribunal filing the application to quash the Charge Memo dated 22.10.1993. In consideration of the various steps and the issuance of the Charge Memo even in 1989 and the subsequent proceedings we find that absolutely there is no delay at all. Even if there is any delay, it is properly explained. The first respondent has also participated throughout the proceedings. Only at the verge of conclusion of the proceedings, the first respondent has approached the Tribunal. The Tribunal has not at all taken into consideration the explanation offered by the Government and erred in finding that there is a delay of one decade in issuing the Charge Memo.

18. In our considered opinion, the Tribunal committed error of law, apparent on the face of record, in mechanically quashing the ChargeMemo simply on the ground of delay without considering the relevant circumstances, such as the nature of the allegations, the stage of the Disciplinary Proceedings, the reasons for the delay and the prejudice likely to be caused to the delinquent in continuing the Disciplinary Proceedings, and such order of the Tribunal cannot be sustained.

19. The first respondent has filed O.A. No.2227 of 1990 challenging the order of the Government viz., non-inclusion of his name in the panel for promotion to the post of Assistant Executive Engineer for the year 1997-98. The Tribunal has allowed O.A. No.2227 of 2000 directing the Government to consider his name for promotion as Assistant Executive Engineer as on 29.10.1997 but the Department has not preferred any Writ Petition as against that order. Drawing the attention of the Court to 1995 (2) Supreme Court Cases 570 (State of Punjab and others vs. Chaman Lal Goyal), the learned counsel for the first respondent has submitted that not-withstanding the pendency of the departmental proceeding, the name of the first respondent is to be considered for promotion without taking into consideration the charges or the pendency of the said inquiry. In the above said decision, finding that the delay cannot be a ground for quashing the charges, the Supreme Court has sent back the matter for finalisation of the Departmental Proceedings. However, the Supreme Court has held that "the name of the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said Inquiry and if he is found fit for promotion, he should be promoted immediately. This direction is made in the particular facts and circumstances of the case though we are aware that the rules and practice normally followed in such cases may be different." Applying the same, the case of the first respondent also could be considered for promotion if he is otherwise found eligible. The promotion so made would, however, be subject to review after finalisation of the departmental proceedings.

20. The impugned order of the Tamil Nadu Administrative Tribunal in O.A. No.2230 of 2000 dated 21.1.2002 is set aside and this Writ Petition is allowed subject to the following directions:

(i) The Disciplinary Proceedings are to be finalised by the Appropriate Authority in accordance with law within a period of three months from the date of communication of the order.
(ii) Since the order of the Tribunal in O.A. No.2227 of 2000 directing promotion with retrospective effect and monetary benefits has not been challenged either by filing a separate Writ Petition or by taking a ground in the present Writ Petition, the State Government is required to implement the same.
(iii) It is, however, made clear that the promotion given to the first respondent by virtue of the direction in O.A. No.2227 of 2000 shall not stand in the way of the Disciplinary Authority in taking any action in accordance with law. It is also made clear that we have not expressed any opinion as to what action should be taken by the Disciplinary Authority and such matter has to be decided by the Disciplinary Authority in accordance with law.

(iv). In the circumstances of the case, there will be no order as to costs.
(v) Consequently, WPMP No.7273 of 2003 is closed.

Index : Yes
Internet:Yes
asvm

To

The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai - 600 104.